

89-1746

FILED

APR 2 1990

JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
Supreme Court of the United States

OCTOBER TERM 1989

RELIANCE INSURANCE COMPANY,
Petitioner,

Vs.

GLADOS, INC.
A BANKRUPT FLORIDA CORPORATION,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES ELEVENTH CIRCUIT
COURT OF APPEALS**

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RELIANCE INSURANCE COMPANY

QUESTIONS PRESENTED FOR REVIEW

1. Does the Eleventh Circuit Court of Appeals' opinion sanction such a departure from the trial record, and the standard of judging substantial and prejudicial error, that it results in manifest injustice and the perpetration of a fraud upon the petitioner; by not allowing a jury to consider the trustworthy report and conclusions of an expert sheriff's department arson investigator?
2. Does the Eleventh Circuit Court of Appeals' interpretation of Federal Rule of Evidence 103 (a) conflict with its own decisions and those of other Federal Circuits by excluding admissable and critical evidence of fraud?

Parent Company(ies) of Reliance Insurance Company:

RELIANCE GROUP HOLDINGS, INC.

RELIANCE GROUP, INC.

RELIANCE FINANCIAL

Non-wholly owned subsidiary:

Frank B. Hall, Inc.

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THE ELEVENTH CIRCUIT COURT OF APPEALS' OPINION SANCTIONS SUCH A DEPARTURE FROM THE TRIAL RECORD, AND THE STANDARD OF JUDGING SUBSTANTIAL AND PREJUDICIAL ERROR, THAT IT RESULTS IN MANIFEST INJUSTICE AND THE PERPETRATION OF A FRAUD UPON THE PETITIONER; BY NOT ALLOWING A JURY TO CONSIDER THE TRUSTWORTHY REPORT AND CONCLUSIONS OF AN EXPERT SHERIFF'S DEPARTMENT ARSON INVESTIGATOR.

THE ELEVENTH CIRCUIT COURT OF APPEALS' INTERPRETATION OF FEDERAL RULE OF EVIDENCE 103 (A) CONFLICTS WITH ITS OWN DECISIONS AND THOSE OF OTHER FEDERAL CIRCUITS BY EXCLUDING ADMISSABLE AND CRITICAL EVIDENCE OF FRAUD.

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**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES ELEVENTH CIRCUIT
COURT OF APPEALS**

The Petitioner, RELIANCE INSURANCE COMPANY, by and through its undersigned counsel, petitions this Honorable Court for a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Eleventh Circuit in this case.

LOWER COURT OPINIONS

The Middle District of Florida case styled *Glados, Inc. vs. Reliance Insurance Company*, Case No.:83-535-CIV-

T-15 was not officially reported, but a copy of the Court's Judgment, dated June 6, 1986, is attached in the Appendix to the Petition at App. 1. The Eleventh Circuit Court of Appeals affirmed the District Court's Judgement at 831 F.2d 1068 (11th Cir. 1987), copy of which is attached in the Appendix to this Petition at App.2-8. This Court granted RELIANCE INSURANCE COMPANY'S Petition for Writ of Certiorari and remanded this case to the Eleventh Circuit for further consideration at ___U.S.___, 109 S.Ct. 775, 102 L.Ed.2d 768 (1989), a copy of which is attached in the Appendix to this Petition at App. 9. The Eleventh Circuit again affirmed the District Court decision in an as yet unreported decision, and a copy of that Court's judgment is attached in the Appendix to this Petition at App. 10.

GROUND'S FOR JURISDICTION

The most recent opinion of the Eleventh Circuit Court of Appeals was rendered on November 22, 1989. A Petition for Rehearing was denied on January 4, 1990 (copy of the Order denying RELIANCE's Petition for Rehearing is attached in Appendix to this Petition at App. 11). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTORY PROVISION INVOLVED

Federal Rule of Evidence 28 U.S.C. App. 103, entitled Rulings on Evidence states in pertinent part as follows:

- (a) Effect of erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Court by offer or was apparent from the context within which questions were asked...

STATEMENT OF THE CASE AND FACTS

1. STATEMENT OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

This case involves a claim for breach of contract; arising out of a restaurant fire that was intentionally set. The contract suit in question, involving an insurance policy issued to the Plaintiff, GLADOS, was initially filed in the Sarasota County Circuit Court of Florida. The suit was then removed to the United States District Court for the Middle District of Florida, on the bases of complete diversity between the parties and the amount in controversy exceeding \$10,000; pursuant to 28 U.S.C. Sections 1291 and 1332 (R 1-5).

The trial commenced on April 21, 1986 with the visiting Honorable Judge John H. Moore, II, presiding. The jury returned a verdict for the Plaintiff and a Judgment was thereafter entered against the Defendant for \$356,281.25. RELIANCE appealed that Judgment to the Eleventh Circuit which affirmed the District Court opinion on September 29, 1987. On Petition for Writ of Certiorari, this Court vacated the Eleventh Circuit's September 29, 1987 Judgment and remanded this case to the Eleventh Circuit for further consideration in light of *Beech Aircraft Corp v. Rainey*, 488 U.S.____, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988). However, the Eleventh Circuit affirmed the District Court Opinion on November 22, 1989. RELIANCE thereafter filed a Petition for Rehearing which was denied on January 4, 1990 (App. 11).

2. STATEMENT OF FACTS

Plaintiff, GLADOS, INC. was formed on September 2, 1982 for the purpose of operating the GLADOS Restaurant business in Sarasota, Florida. This husband and wife corporation was owned and operated by GLADYS and WILLIAM RAY ADDISON. GLADYS ADDISON was the sole stockholder of GLADOS, INC. and WILLIAM RAY ADDISON was the General Manager of GLADOS, INC. The restaurant where the fire occurred was the only business of GLADOS, INC. and was controlled and operated by GLADYS and WILLIAM RAY ADDISON.

Insurance policy number CI 5016010 was obtained by the ADDISONS for the restaurant from the Defendant, RELIANCE INSURANCE COMPANY. That policy lists GLADOS, INC. as the named insured, for the policy period of September 3, 1982 through September 3, 1983. A fire was intentionally set to the restaurant at approximately 4:30 a.m. on December 21, 1982. After this fire, RELIANCE INSURANCE COMPANY refused to pay the ADDISONS or GLADOS, INC. for their claimed fire loss. (R 4-20-21).

Public fire officials and a private cause and origin expert testified that this fire was intentionally set, with the use of an accelerant. (R 5-159, 223, 125-126). No evidence, other than the ADDISONS' denial, was offered to the contrary.

Additionally, Detective Ronald Albritton of the Sarasota **County Sheriff's Department**, who had a college degree in criminology, conducted a thorough investigation of this fire. He **concluded that this fire was intentionally set by WILLIAM ADDISON**. (R 5-187-189). However, the proffer of **this testimony was excluded** from evidence by the District Court. The District Court **also excluded** from evidence this **official investigator's detailed, written report**

prepared for the Sarasota County Sheriff's Department **even though the report was noted to be "trustworthy"** (R 5-182, 183, 198; a copy of said report is attached in the Appendix to this Petition at App. 13-46). That report clearly reflects the fraud that is the subject of this litigation. (emphasis supplied).

During the remainder of the Petition, for the sake of uniformity and clarity, the Plaintiff/Respondent, will be referred to as either "GLADOS" or the "ADDISONS" and the Defendant/Petitioner will be referred to as "RELIANCE".

CONSIDERATIONS FOR REVIEW

I. THE ELEVENTH CIRCUIT COURT OF APPEALS' OPINION SANCTIONS SUCH A DEPARTURE FROM THE TRIAL RECORD, AND THE STANDARD OF JUDGING SUBSTANTIAL AND PREJUDICIAL ERROR, THAT IT RESULTS IN MANIFEST INJUSTICE AND THE PERPETRATION OF A FRAUD UPON THE PETITIONER; BY NOT ALLOWING A JURY TO CONSIDER THE TRUSTWORTHY REPORT AND CONCLUSIONS OF AN EXPERT SHERIFF'S DEPARTMENT ARSON INVESTIGATOR.

II. THE ELEVENTH CIRCUIT COURT OF APPEALS' INTERPRETATION OF FEDERAL RULE OF EVIDENCE 103(a) CONFLICTS WITH ITS OWN DECISIONS AND THOSE OF OTHER FEDERAL CIRCUITS BY EXCLUDING ADMISSABLE AND CRITICAL EVIDENCE OF FRAUD.

REASONS FOR GRANTING THE PETITION

POINT ONE

THE ELEVENTH CIRCUIT COURT OF APPEALS' OPINION SANCTIONS SUCH A DEPARTURE FROM THE TRIAL RECORD, AND THE STANDARD OF JUDGING SUBSTANTIAL AND PREJUDICIAL ERROR, THAT IT RESULTS IN MANIFEST INJUSTICE AND THE PERPETRATION OF A FRAUD UPON THE PETITIONER; BY NOT ALLOWING A JURY TO CONSIDER THE TRUSTWORTHY REPORT AND CONCLUSIONS OF AN EXPERT SHERIFF'S DEPARTMENT ARSON INVESTIGATOR.

The Eleventh Circuit has incorrectly tailored its reading of the trial record to support its departure from considering the proper standards of judging substantial and prejudicial error. See *Glados, Inc. v. Reliance Insurance Company*, 888 F.2d 1309, 1313 (11th Cir. 1987).

The Court makes the following statements which, upon careful review of the record, are simply incorrect:

1. ...since the District Court allowed the investigator (Ronald Albritton) to testify as to **most of his** conclusions made in the report,...(emphasis supplied)
2. "Since **all** the facts upon which the investigator's conclusion was based were brought out in his testimony, the mere fact that he did not say directly that he believed the owner of the restaurant had started the fire did not substantially detract from his testimony, (emphasis supplied)
3. ... Since Detective Albritton testified as to **all the facts and conclusions** that led him to that ultimate conclusion. *Id.* at 1313

A review of the trial transcript and Detective Albritton's report will reveal that those statements are overbroad and mischaracterize the testimony presented to the jury in the District Court. Detective Albritton was not permitted to testify about "most" of the facts of his investigation or any of his conclusions.

In order to appreciate this error, the Court should review Detective Albritton's complete testimony (R5-160-200). The first six pages of Detective Albritton's testimony (R5-160-166) contain background information on Detective Albritton and a bench conference; which set the stage for this Court's consideration of Federal Rule of Evidence 803 (8) (C). The Court and the Eleventh Circuit have already correctly ruled that Detective Albritton's conclusion as to who set the fire was admissible under Rule 803 (8) C Federal Rules of Evidence. See *Glados* 888 F.2d at 1312, and *Beech*, 488 U.S.____, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988).

On pages R5-167-178 of the record, Albritton testifies about the following facts:

1. The Sonitrol report (R5-168-170) and the contents of the safe in the Glados restaurant (R5-171-174);
2. Detective Albritton's determination that ADDISON had left the state after the fire (R5-174);
3. Detective Albritton's contact with the proprietor of Bobbie's Plants Unlimited regarding plants in the Glados restaurant (R5-175);
4. Detective Albritton's determination of the available insurance coverage for the Glados restaurant (R5-175-176); and

5. ADDISON's unwillingness to give Detective Albritton a statement without the presence of his Attorney. (R5-177).

On pages R5-176-181, counsel for Glados interrupted Detective Albritton's direct examination with five hearsay objections, all of which were sustained by the Court. (The Court's ruling on R5-179 and 180 are printed as "overruled" in the transcript. However, those appear to be typographical errors because the follow-up questions indicate that the objections were instead sustained.)

The District Court judge cut off counsel for RELIANCE at that point stating "...it's all nice to know what he (Detective Albritton) did and the sequence in which he did it, but where is that leading to?" Counsel for RELIANCE responded "I would like to point out the trustworthiness of his report and lay a foundation for tendering his report for admission into evidence." (R5-181) The trial judge was seemingly tired of hearing about Detective Albritton's report. However, the mere fact that Detective Albritton's testimony may have taken significant time to fully present to the jury should not have affected the Judge's ruling. A similar ruling was found to be prejudicial so that a new trial was warranted in *Shad v. Dean Witter Reynolds, Inc.*, 799 F.2d 525 (9th Cir. 1986).

The District Court judge then requested that counsel for RELIANCE proffer Detective Albritton's testimony out of the hearing of the jury. The next 18 pages of the record (R5-181-199) set forth that proffer. Seven of those pages (R5-192-199) were the Court's and counsel's discussion of which parts of Detective Albritton's testimony had already been covered in the presence of the jury. The Court stated at one point "so far he's (Detective Albritton) covered everything in front of the jury." However, the fact of the matter is that only a portion of Detective Albritton's

report had been covered in the presence of the jury. The only salient facts which the jury heard were facts about the Sonitrol Report and ADDISON's lack of cooperation with detective Albritton.

The following are examples of facts contained in Detective Albritton's report that were **not** brought before the jury:

1. Detective Albritton's interview with Terrance Hannon, who owned a "bottle club" (a bring your own alcohol establishment) frequented by the ADDISONS. (App. 26-27)
2. Detective Albritton's interview with Glados Restaurant employee, Paige Watson. (App. 27-30)
3. Detective Albritton's interviews with Glados Restaurant employee, Frank Broomfield. (App. 30-31, 37-38)
4. Detective Albritton's interview with Sharon Taylor, former waitress at the Glados Restaurant. (App. 31-32)
5. Detective Albritton's interview with Linda Loewenstern of Accounting Associated, the accounting firm for the Glados Restaurant. (App. 38-39)
6. Detective Albritton's interview with Kelsie Moore, customer relations manager with Eli Witt Vending Division, a vending company which had machines in the Glados Restaurant. (App. 40)
7. Detective Albritton's interview with Vince Cervera, whose band had played at the Glados Restaurant. (App. 41-43)

Detective Albritton was not once able to testify about his suspicions or the conclusions or observations he gathered from interviewing these witnesses. Clearly, Detective Albritton was not permitted to testify as to "all of the facts and conclusions", or even who set this fire; contrary to the Circuit Court's assertion on page 751 of its published November 22, 1989 opinion. See *Glados* No. 86-3448 (11th Cir. 1989).

A review of Detective Albritton's summary of his investigation will clearly show that he had multiple suspicions and conclusions stemming from his investigation of the fire. (R5-187-189). Rather than give the jury an opportunity to evaluate Detective Albritton's testimony, and report, the jury was left with the fact that ADDISON was uncooperative. Counsel for Glados did not even deem it necessary to cross-examine Detective Albritton in view of this strictly limited testimony before the jury. (R5-199-200)

RELIANCE's counsel was unable to present the brunt of the testimony of one of RELIANCE's most material and credible witnesses. Had RELIANCE been able to continue with the presentation of Detective Albritton's investigation, the jury would have heard additional facts which would have cast further suspicion on the ADDISONS. Instead, none of Detective Albritton's suspicions or conclusions regarding these facts were brought before the jury, including Detective Albritton's ultimate conclusion that ADDISON set the fire. This court should allow presentation of the evidence to show the perpetration of fraud rather than to restrict it or call it harmless error.

Every trial lawyer knows the tremendous impact that a credible police investigator can have on a jury, particularly in a fraud case. To deny Petitioner the right to present such testimony to the jury, including Detective Albritton's official report, would result in a denial of fundamental justice to the Petitioner. One gets the impression that

the Eleventh Circuit decided that the District Court's failure to admit Detective Albritton's conclusions and report was going to be labeled harmless error; and that they then tailored their reading of the trial record to justify that end. The Eleventh Circuit's decision was so far a departure "from the accepted and usual of judicial proceedings " that an exercise of this Court's power of supervision by Writ of Certiorari is warranted. See Rule 17(a), Supreme Court Rules

POINT TWO

THE ELEVENTH CIRCUIT COURT OF APPEALS' INTERPRETATION OF FEDERAL RULE OF EVIDENCE 103(a) CONFLICTS WITH ITS OWN DECISIONS AND THOSE OF OTHER FEDERAL CIRCUITS BY EXCLUDING ADMISSABLE AND CRITICAL EVIDENCE OF FRAUD

The Eleventh Circuit Court of Appeals' interpretation of Federal Rule of Evidence 103(a) is in conflict with its own previous decisions, and those of other Federal Circuits. The Eleventh Circuit attempted to distinguish the binding precedent found in *Johnson v. William C. Ellis & Sons*, 609 F.2d 820, 823 (5th Cir. 1980). Decisions of the former Fifth Circuit rendered prior to October 1, 1981 are binding precedent in the Eleventh Circuit. See *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981)

In *Johnson*, the trial court excluded several safety publications proffered by the mother of a man who died as a result of injuries received while he was working on a cotton compress. The Fifth Circuit reversed, holding that the direct quotation from a number of sources would have been more dramatic and might have been more persuasive to the jury even though the substance of the excluded safety publications was effectively placed before the jury. *Johnson* 609 F2d at 823.

The Eleventh Circuit in the case at bar stated that "the exclusion of one investigator's conclusion based on one report does not equal a series of safety publications, particularly when the investigator did testify to the pertinent facts in his report." *Glados*, 888 F.2d at 1313. Despite that the *Johnson* case and the case at bar appear indistinguishable, the partial testimony of Detective Albritton regarding some of the facts pertaining to his investigation certainly does not equal a statement of Detective Albritton's opinion to the jury. It is inconceivable that there would be a "more dramatic" and "more persuasive" statement to leave in the jury's mind than Detective Albritton's opinion that ADDISON set the fire. 609 F.2d at 823.

Because *Johnson* is so closely on point, the Eleventh Circuit should be bound by the *Johnson* court's conclusion that "it is not for us to decide that the effect of what was excluded might not have altered the jury's views." *Id.* An expert and trustworthy police officer's conclusion that the sole shareholder of GLADOS, INC. set the fire in question is the most critical testimony that the jury could have heard.

The Eleventh Circuit should also be bound by its decision in *Allen v. County of Montgomery*, 788 F.2d 1485 (11th Cir. 1986). In that case, the Eleventh Circuit held that the exclusion of relevant evidence of discrimination occurring before an employee's demotion after maternity leave was not harmless, because the excluded evidence was a major link in the employee's ability to prove discrimination. The Eleventh Circuit felt that the exclusion of that evidence substantially affected the employee's ability to carry her burden of demonstrating discriminatory intent. The same conclusion should have been reached in the present case. RELIANCE's burden to prove arson was

substantially affected by the District Court's exclusion of Detective Albritton's conclusions and his report.

The Eleventh Circuit sought to rely on *Haney v. Mizell Memorial Hospital*, 744 F.2d 1467, 1474-1475 (11th Cir. 1984) to support its conclusion that the exclusion of Detective Albritton's ultimate conclusion that ADDISON started the fire "did not substantially detract from his testimony." *Glados* 888 F.2d at 1313. *Haney* involved the exclusion of a medical doctor's opinion that a treating physician was negligent pursuant to Rule 704, Federal Rules of Evidence. In *Haney*, the appellate court did not have the basis upon which the trial court excluded the doctor's opinion, to assist them in making their determination:

Although the record does not clearly reveal the District Court's reasons for ruling as it did, the Court **may** have concluded that since the witness would testify as to the relevant standard of care and offer his opinion on whether Dr. Meigs' conduct had fallen below that standard the excluded opinion would be only marginally helpful to the jury...744 F.2d at 1474. (emphasis supplied)

The *Haney* decision had nothing to do with a Rule 803 (8) C question and does nothing to support the Eleventh Circuit's decision in this case. It is clear from the record in this case that the District Court did not allow Detective Albritton's conclusions or report into evidence because of Rule 803 (8) C, Federal Rules of Evidence. Unlike *Haney*, the Eleventh Circuit in the case at bar had the benefit of the District Court Judge's basis for his ruling. The Eleventh Circuit's conclusory statement that Detective Albritton's ultimate conclusion "did not substantially detract from his testimony" is not supported in the record *Glados* 888 F.2d at 1313. Only the jury should have decided the weight to be given that conclusion. This is especially true for a case where fraud is allegedly being perpetrated and the

credibility and trustworthiness of witnesses are critical questions for the jury to resolve. Unfortunately, the jury in the case at bar saw Detective Albritton cast off; as if his testimony and report lacked trustworthiness, facts the trial court acknowledged outside the presence of the jury (R5-182, 183, 198).

The Eleventh Circuit's decision conflicts with similar decisions in other federal circuits. For example:

1. A truck driver brought suit against a union seeking damages for injuries suffered when a rock struck him in the head as he crossed a picket line. The First Circuit held that the trial court committed reversible error by excluding the union business agent's testimony about instructions he allegedly gave strikers since the excluded evidence went to the central issue in the case. The court noted that fleeting references to a part of these instructions elsewhere in the record did not cure the incorrect ruling to exclude the testimony, nor did less forceful testimony of the same tenor by another witness. See *Curreri v. International Brotherhood of Teamsters*, 722 F.2d 6 (1st Cir. 1983).

2. In an action for personal injuries sustained by the Plaintiff when he was run over by a train when he attempted to make his way through a railroad yard, the trial court excluded evidence concerning prior usage of the railroad yard by the public. The District of Columbia Circuit reversed holding that the exclusion of the most relevant evidence pertaining to a crucial element of the case was "inconsistent with substantial justice." See *Hopkins v. Baker*, 553 F.2d 1339, 1344 (D.C. Cir 1977).

3. In a suit by a seaman under the Jones Act against the owner and operator of a supertanker, the trial court excluded evidence from which it could be inferred that the

seaman had suborned perjury of a critical witness. The Third Circuit reversed, holding that the exclusion of that evidence was not harmless because it was critical for the owner and operator of the supertanker to make their argument on defense of liability and was potentially their best evidence. See *McQueeney v. Wilmington Trust Company*, 779 F.2d 916, 928 (3rd Cir 1985).

It is again difficult to conceive of any more forceful, critical and poignant testimony than having a police officer (Detective Albritton) testify to the jury that the man sitting at the Plaintiff's table, ADDISON, was the person who set fire to the Restaurant in question. There lies the substantial right of RELIANCE that was affected by the Trial Court.

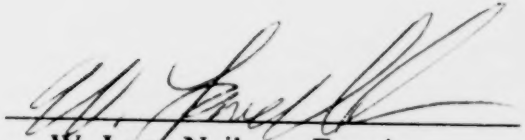
The Eleventh Circuit's attempt at distinguishing *Johnson v. William C. Ellison & Son* strains all reason. Again, "(t)he direct quotation...would have been more dramatic and might have been more persuasive" 609 F.2d at 823. The identical reasoning should have been followed by the Eleventh Circuit in the instant case. By not doing so, the Eleventh Circuit is usurping the function of the jury and effectively allowing insurance fraud to go unchecked.

CONCLUSION

RELIANCE INSURANCE COMPANY requests that this court grant its Petition for Writ of Certiorari so that this case can proceed to a jury trial.

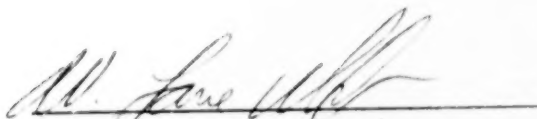
Respectfully submitted,

3/30/90
DATE


W. Lane Neilson, Esquire
NEILSON AND ASSOCIATES
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Orlando, FL 32801
(407) 843-6514
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing have been furnished by U.S. Mail to JERE M. FISHBACK, ESQUIRE, 150 Second Avenue North, Suite 1280, St. Petersburg, Florida 33701 on the 30th day of ~~February~~, 1989. *March 1, 1990.*



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Attorney for Petitioner

APPENDIX

DOCUMENT (S)	PAGE (S)
1. Copy of District Court Judgment, dated June 6, 1986	1
2. Eleventh Circuit Court of Appeals affirmation of District Court's Judgment at 831 F.2d 1068 (11th Cir. 1987)	2-8
3. Court granted RELIANCE INSURANCE COMPANY's Petition for Writ of Certiorari at _____ U.S. _____, 109 S.Ct. 775, 102 L. Ed.2d 768 (1989)	9
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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Case Number: 83-535-CIV-T-15

GLADOS, INC.,

Plaintiff,

Vs.

RELIANCE INSURANCE COMPANY

Defendant.

JUDGMENT IN A CIVIL CASE

X Jury Verdict, this action came before the Court for a trial by jury.

The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that the Plaintiff, GLADOS, INC. recover of the Defendant, RELIANCE INSURANCE COMPANY, the total sum of \$356,281.25 (including damages, prejudgment interest, attorneys' fees, and costs) together with post-judgment interest thereon at the legal rate as provided by law.

Date: June 6, 1986

Donald M. Cinnamond
Clerk

George W. Courson
(By) Deputy Clerk

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No: 86-3448

GLADOS, INC.,
A Florida Corporation

Plaintiff - Appellee,

Vs.

RELIANCE INSURANCE COMPANY

Defendant - Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF
FLORIDA**

September 29, 1987

BEFORE: TJOFLAT and EDMONDSON, Circuit Judges,
and Morgan, Senior Circuit Judge.

PER CURIAM:

This is an equal appeal from the breach of contract case. A jury found that the defendant had failed to pay a claim that was covered by the plaintiff's insurance policy with the defendant, and the defendant now appeals. We affirm the judgement below.

I

The plaintiff, Glados, Inc., is a corporation formed for the purpose of operating a restaurant in Sarasota, Florida. Gladys Addison was the sole stockholder of Glados, and her husband, Bill Addison, was the corporation's general manager. The defendant, Reliance Insurance Company (Reliance), issued an insurance policy naming Glados, Inc. as the insured. The policy period was to last from September 3, 1982 through September 3, 1983.

A fire occurred at the Glados restaurant on December 31, 1982, and Glados subsequently made a claim under the policy's fire insurance coverage. Reliance investigated the fire, and concluded that the fire was intentionally set. Reliance refused to pay, claiming that Bill Addison had set the fire and that Glados had breached the policy by refusing to cooperate with Reliance investigation. Glados then filed this suit. After a trial in which the facts were hotly disputed, a jury found in a special verdict that Addison had not intentionally caused the restaurant fire and had not willfully or frauduently misrepresented or concealed any material fact relating to the insurance claim. The jury gave Glados the damages it sought. The court thereafter denied Reliance's motion for a judgement n.o.v. or a new trial.

II.

Reliance first argues that the district court committed reversible error by allowing the jury to consider the testimony of Andreas Ameres, whom Glados called as a rebuttal witness following the presentation of Reliance's case in chief. Under the precedent of this circuit, "[t]o prevail on this issue, [Reliance] must show (1) that the district court abused its discretion in erroneously admitting the testimony and (2) that the admission of the evidence affected [Reliance's] substantial rights." *O'Donnell v. Georgia Osteopathic Hosp., Inc.*, 748 F.2d 1543, 1547 (11th Cir. 1984) (citations omitted). We find no abuse of discretion.

Ameres had been the prior owner of Glados' Restaurant, and had sold it to Glados in 1982. Ameres had also incorporated two other businesses, each of which operated a restaurant (Grapevine Restaurants No. 1 and 2) in the Tampa Bay area. As was the case with the restaurant Glados bought, Ameres sold each of these other restaurants to a third party and took back a note as part of the purchase price. The notes involved in the sale of these restaurants, as well as that between Ameres and Glados, required that the purchaser insure the restaurant assets against fire loss and that corporations controlled by Ameres be named as an insured party. Following the sale of Grapevine Restaurants No. 1 and 2, a fire occurred at each facility. Relying on the security agreements, Ameres' corporations sought a share of the insurance proceeds.

A similar pattern of events occurred with regard to the Glados Restaurant. Several months after Glados purchased the facility, a fire caused the partial destruction of the building and equipment. When Glados sued Reliance to recover insurance proceeds, counsel for Ameres filed a motion to intervene, claiming entitlement to some of the money Glados was seeking. Ameres' counsel

counsel later abandoned the motion, allegedly without informing Ameres, and the trial court denied the motion.

Federal Rule of Evidence 404(b) prohibits the admission of evidence of "other crimes, wrongs, or acts... to prove the character of a person in order to show action in conformity therewith." Such evidence is admissible, however, for other purposes "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Glados argues that the evidence of fires at other restaurants in which Ameres held a security interest is relevant to the issue whether Ameres had a plan or motive to set fire to the Glados Restaurant. We agree.

This case is unusual in that the evidence of extrinsic acts concerns a third party, rather than the plaintiff or defendant. *In United States v. Morano*, 697 F. 2d 923 (11th Cir. 1983) (per curiam), we faced an analogous situation, in which the district court allowed the Government to introduce evidence of prior fires set by a third party allegedly hired by the defendant to destroy his business. We held that "Rule 404(b) does not specifically apply to exclude this evidence because it involves an extraneous offence committed by someone other than the defendant." *Id.* at 926. Nevertheless, we decided that "the exceptions listed in the Rule should be considered in weighing the balance between the relevancy of this evidence and its prejudice under Rule 403." *Id.*

Reliance's primary defence to Glados' claim for insurance proceeds was that Bill Addison, with his wife's agreement, had intentionally set fire to their restaurant. Among other things, Reliance introduced evidence of the restaurant's poor financial condition to demonstrate a motive for arson, and elicited testimony that the Addisons had suddenly removed important documents shortly before the fire destroyed the office, implying that they had planned the fire. To counter this circumstantial evidence, Glados sought to show that it was not only the entity that

stood to gain from the destruction of the restaurant. To this end, Glados elicited testimony from Ameres that included descriptions of the other fires.

The purpose of the evidence that Glados introduced was clearly relevant to the issues in the dispute. In light of Reliance's defence that only Glados had a motive and plan for committing arson, Glados could logically rebut that argument by showing that a third party (Ameres) also had a motive and plan for the restaurant's destruction. Once that issue arose, we cannot say that the district court abused its discretion by concluding that evidence of similar fires was probative. *See generally United States v. Beechum*, 582 F. 2d 898, 911 n. 15 (5th Cir. 1978) (en banc).² Finally, although evidence of a pattern of fires at restaurants in which Ameres held an interest was obviously damaging to Reliance, we cannot say that its value was outweighed by an unfair prejudice. *See United States v. Williams*, 816 F. 2d 1527, 1532 (11th Cir. 1987) (excluding evidence under Rule 403 "is an exceptional remedy"). We conclude that the district court's decision to permit the jury to hear the evidence of the other fires was not an abuse of discretion.

Reliance also contends that the district court committed reversible error by refusing to admit into evidence the conclusion of Ronald Albritton, a police investigator, that Bill Addison had ignited the fire at issue. The court permitted Detective Albritton to describe to the jury his investigation and most of his conclusions, e.g., who had been in the restaurant just prior to the blaze and what he found in a safe in the office. In addition, Albritton testified that he had received very little cooperation from the Addisons during the course of his investigation. The court refused, however, to allow Albritton to testify that it was his conclusion that Bill Addison had intentionally set the fire.

We need not decide whether Detective Albritton's conclusion regarding the fire would be a "factual finding"

under a liberal reading of Fed. R. Civ. P. 803(8) (C) because binding precedent in this circuit takes a restrictive approach to that hearsay exception. *See Rainey v. Beech Aircraft Corp.*, 784 F. 2d 1523, 1528 (11th Cir.) (per curiam), *vacated and rehearing en banc granted*, 791 F. 2d 833 (11 Cir. 1986), *reinstated*, ___ F. 2d ___ (11th Cir. 1987) (slip op 4713, Sept. 22, 1987). Until overruled by a majority of this court sitting en banc, we are bound to follow the decision of the former Fifth Circuit in *Smith v. Ithaca Corp.*, 612 F. 2d 215 (5th Cir. 1980). Under that precedent, the district court was fully correct to exclude Detective Albritton's opinion. *See id.* at 220-23.

Finally, Reliance argues that the district court erred in denying its motion for a directed verdict. Reliance based its motion on its claim that Glados had breached a "cooperation clause" in the policy when Gladys and Bill Addison refused to turn over their personal financial records. We find no error.

The pertinent provisions of the insurance policy state that when a loss occurs, "the Insured shall ... submit to examination under oath" and that "(Reliance) may examine and audit the Named Insured's books and records at any time during the policy period and extensions and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance." The face of the policy lists only Glados, Inc. as the the "Named Insured," gives the restaurant address as the "Named Insured's Address," and describes the "Named Insured" as a corporation. Nowhere does the policy indicate that Addisons, in their individual capacity, are to be treated in the same manner as the named insured.

Reliance concedes that the Addisons complied with requests that they allow it to examine the corporate documents and records for Glados. It contends, however, that because Glados was wholly owned by Gladys Addison, the personal financial records of the Addisons

were highly relevant to Reliance's arson defense and were covered by the cooperation clause. We disagree. The insurance policy is between Reliance and Glados, Inc., a corporation. The language of the cooperation clause is unambiguous, and requires only the "Named Insured" to provide relevant documents to Reliance. Under the terms of this policy, we cannot conclude that the Addisons were obligated to provide their personal records.³

AFFIRMED.

-
1. Glados filed this suit in the state court, and Reliance removed the case to the district court, alleging diversity of citizenship jurisdiction. The trial of the case was then postponed because of a bankruptcy proceeding that is not relevant to this appeal.
 2. In *Bonner v. City of Prichard*, 661 F. 2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.
 3. Reliance argues that the district court's jury instruction regarding whether Glados concealed or misrepresented any information related to the fire claim impermissibly increased its burden of proof. Assuming, *arguendo*, that this is so, the record demonstrates that any such error was harmless.

United States Court of Appeals

No. 87-1630

RELIANCE INSURANCE COMPANY
Plaintiff,

Vs.

GLADOS, INC.

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Eleventh Circuit.

THE CAUSE having been submitted on the petition for writ of certiorari and response thereto,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated with costs, and that this cause is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Beech Aircraft Corporation v. Rainey*, 488 U.S. (1988)

IT IS FURTHER ORDERED that the petitioner, Reliance Insurance Company, recover from Glados, Inc. Two Hundred Dollars (\$200.00) for its costs herein expended.

January 9, 1989

Clerk's costs: \$200.00

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 86-3448

D.C. Docket No. 83-535-CIV-T-15

GLADOS, INC.,
A Florida Corporation

Plaintiff-Appellee,

Vs.

RELIANCE INSURANCE COMPANY

Defendant-Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF
FLORIDA**

BEFORE: TJOFLAT, Chief Judge, EDMONDSON,
Circuit Judge, and MORGAN, Senior Circuit Judge.

**JUDGEMENT ON REMAND FROM THE
SUPREME COURT OF THE UNITED STATES**

This cause came on to be heard on remand from the
Supreme Court of the United States;

ON CONSIDERATION WHEREOF, it is now hereby
ordered and adjudged that the original decision of this
Court entered September 29, 1987, is REAFFIRMED.

Entered: November 22, 1989
For the Court: Miguel J. Cortez,
Clerk

By: _____
Deputy Clerk

ISSUED AS MANDATE: January 16, 1990

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 86-3448

GLADOS, INC.,
A Florida Corporation
Plaintiff-Appellee,

Vs.

RELIANCE INSURANCE COMPANY
Defendant-Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF
FLORIDA**

ON PETITIONS FOR REHEARING
January 4, 1990

BEFORE: TJOFLAT, Chief Judge, EDMONDSON,
Circuit Judge, and **MORGAN, Senior Circuit Judge.**

PER CURIAM:

The petition(s) for rehearing filed by appellant, Reliance Insurance Company, is denied.

ENTERED FOR THE COURT:

United States Circuit Judge

INVESTIGATIVE REPORT
Sarasota County Sheriff's Department

INVESTIGATION AT: Sarasota Co., Fla.
DATE THIS REPORT: 3/30/83
PERIOD COVERED BY INVESTIGATION:
12/31/82 - to date

TITLE: GLADOS RESTAURANT
7275 S. Tamiami Trail
Sarasota, FL

CLASSIFICATION: SUSPICIOUS FIRE - 6
FIRE: 82-56225

REPORT MADE BY:
Det. R. Albritton #147 LMD (1)
DEPUTY SHERIFF
SARASOTA COUNTY
SARASOTA, FLORIDA

REPORT APPROVED BY:
JIM HARDCASTLE
SHERIFF OF SARASOTA
COUNTY
SARASOTA, FLORIDA

INDEX

SUSPECT

William R. Addison	W/M	DOB 6/4/40
1161 Lake House Circle		5'7", 145 lbs.
Sarasota, FL		Blu/Gry
EXCEPTIONALLY CLEARED		

12/31/82 - 0930 hours

Writer, detective on call, was advised by telephone by Communications of a suspicious fire at Glado's Restaurant, 7275 S. Tamiami Trail. Writer responded to the scene and was briefed by Criminalistics Tech. H. Sicks and South Trail Fire Dept. investigator Randy Coggan. A fire had occurred within the office area and has spread partially into the kitchen area before it was extinguished. The office was consumed by the fire. The fire had spread through the ceiling above the office. The entire building suffered smoke damage. Coggan advises the fire is of suspicious circumstances and arson is suspected. (see Coggan's report of the incident).

Writer spoke with Tim Hornes, Sonitrol Security Systems serviceman. He reports Sonitrol employee Ginny Bontrager was on duty at time of the fire. She made the following notations:

- 0412 hours - received "code out" by owner, Bill Addison.
- prior to code out Bontrager heard crackling and popping sounds over the monitor.
- there was no fire alarm installed in the restaurant.
- 0425 - Bontrager could hear the sound of the fire very loud over the monitor.
- 0426 - she attempted to contact Mr. Addison at his home; no answer.
- 0432 - the monitor system went dead.
- 0434 - Bontrager called the cleanup man, Randy Foder, 1803 Marbeth St., 966-4128, W/M, 3/5/57; after attempting to call Addison at home.

Coggan advises the owner, Mr Bill Addison, arrived at the scene of the fire by approx. 0445 hrs. He had been contacted at My place Bottle Club on Siesta Key and told of the fire. He and his wife were very intoxicated. Mr. Addison was warned not to enter the premises. However, later he was found inside the building, unconscious. He had been overcome by smoke and was taken to Sarasota Memorial Hospital. He was placed in intensive care.

Coggan adds that two drawers to the filing cabinet in the office were found open. All the contents had been burned. He had checked the employee punch in/punch out time clock which is located just outside the south wall of the office. From looking at the time cards it appears the last to employees to clock out were Van Thorsen and Cheryl Thomas.

Randy Foder is the maintenance and cleanup man. He left yesterday afternoon at approx. 1700 hrs. with his live-in girlfriend, Missy White. She is the restaurant's bookkeeper. They arrived at the fire just after the firemen and used their key to let the firemen inside.

The owner, Bill Addison, sold his gas stations named "Purple Martin" in Michigan. He moved to Sarasota and bought the restaurant approx. 3 month ago.

1010 hours

Writer spoke at the scene with Miss Mary Ann "Missy" white, W/F, DOB 8/22/58 of 1803 Marbeth St., Sarasota, 966-4128. She provided the following information:

- the restaurant opened October 11, 1982.
- she answered an ad and applied for the job of

bookkeeper approx. 3 weeks after the restaurant opened.

- she had been the bookkeeper when the restaurant there was the Grapevine.
- she states the owner does not know much about the restaurant business.
- the owner does smoke cigarettes moderately.
- the file cabinet does not lock but she always keeps it closed.
- the door to the office automatically closes and locks when you walk through it.
- people with keys who frequently come and go through the office is herself, and Mr. and Mrs. Addison.
- other only come into the office as necessary.
- she estimates that there was approx. \$7,000 in the safe.
- she was called by Sonitrol and told of the fire, after they could not get in touch with the owner. She thought he may be at the bottle club as she called there and did notify Mr. Addison of the fire.
- she and Foder then went to the fire scene.
- Foder used his key to let the firemen inside.
- in the file cabinet drawers should be the following:
 - top drawer - application forms and payroll stubs from each week.
 - 2nd drawer - receipts of all bills that have been paid.
 - 3rd drawer - Visa and Mastercharge drafts, office supplies. and an adding machine that needed repair.
 - 4th drawer - employee uniforms.
- the restaurant's tax information went to "Linda" at Accounting Associates near Gulf Gate Mall. Most tax records had already been sent to her and she should have copies.

- Linda was to meet with Mr. Addison on Monday regarding this years taxes.
- large items that should have been in the office was the safe, file cabinet, 2 desks and another file box containing all bills yet to be paid.

As the building could not be secured, Writer suggested to White that she have the safe opened and if the contents are still of value, that she take them to the bank.

Called to open the safe was Ken Kling of AAA Locksmith. He stated he had worked on this safe when the restaurant first opened. He noted the spindle on the safe was plastic but the handle was metal. As it was found on the floor beneath the safe, Kling states it should still be on the safe. Possibly it was forced off.

As it will take hours for Kling to open the safe without damaging the contents Writer instructed him to notify Sheriff's Dept. when he was getting near to opening it. This way witnesses could be present as the safe is opened.

1530 hours

Kling was near to having the safe opened and the following persons were present to see the safe opened:

- Mrs. Addison, Missy White, Randy Foder, Kling, Larry Kelley (restaurant employee), Capt. Coleman and Inspector Coggan with South Trail Fire Dept., Dep. H. Sicks, Writer.

The interior of the safe was immediately photographed by Dep. Sicks. Although some contents were browned, nothing was destroyed.

The contents were removed from the safe and counted before all the above witnesses. Money inside included the following:

- the waitresses \$20 "banks" (Cheryl's, Diane's and Suzi's).
- rolled coins of \$70 in quarters, \$70 in dimes, \$44 in nickles, and \$4.50 in pennies.
- 4 cash drawers to cash registers. Each is supposed to contain \$150 even but were found to contain 1) \$150.00, 2) \$150.00, 3) \$148.75 and 4) \$130.00.
- \$333.30 in two Mastercharge receipts from last night's money bag.
- \$365 paper money plus \$1.44 coin from the dining room bag from last night.
- \$158.50 from the last nights bar money bag.
- \$180 cash for the New Year's Eve party receipts.
- 90 checks.
- \$52 from a second bar bag from last night.
- \$9.75 in money owed by employees for mistakes in adding up customers bills.
- approx. \$12.00 coin from the vending machines.
- the petty cash box which contained: \$20, \$90 and \$22.77, \$20 in "paid out slips", \$300 in stacked bills plus \$27.78, plus \$10.73, plus \$1.57 in receipts (separate groups of money) plus \$49 in bills plus \$2.50 in coin.

Writer then spoke with Mrs. Gladys Addison, W/F, DOB 5/23/43 of 1161 Lake House Circle, Siesta Key, 349-5024. Her husband is William "Bill" Addison, W/M, DOB 6/4/40. Together, they own and run Glados Restaurant.

When asked about the closing of the building she advised the following:

- the building was closed up at approx. 0400 hrs. this morning.
- the last three people present who closed up were her, Mr. Addison and Frank Broomfield, the dining room manager.
- all three left together and went to the Bottle Club on Siesta Key. There they got the call from Missy White advising them of the fire.
- she states no one was in the office after 0230 hrs.
- the clock above the bar is reset each day. It stops each night when the electricity to the bar room lights are shut off. Thus, the time on that clock indicates the time the electricity was shut off (0404 hours).

1/3/83 - 1600 hours

Writer spoke by telephone with Dick Meredith, supervisor of Sonitrol Security Systems. His employee, Ginnie Bontrager recalled to him that William Addison (Sonitrol Security #8202) coded out of the restaurant at 0412 hrs. on 12/31/82. However, the door light did not go off (indicating Addison actually left the building and shut the door) for approx. another four to five minutes.

Just minutes later she heard loud crackling and popping noises over the monitor. At 0425 hrs. she telephoned for South Trail Fire Dept.

Meredith furnished Writer with the restaurant's closing code out times for the past month. This is to establish if it was usual or unusual for a closing to occur after 0400 hrs. The closing times are indicated below. Those dates

where Addison was the actual person coding out (as opposed to some other employee) is so noted.

<u>DATE</u>	<u>TIME</u>	<u>DATE</u>	<u>TIME</u>
12/31/82	0412 (Addison)	12/21/82	0120 (Addison)
12/30/82	0054	12/20/82	0123 (Addison)
12/29/82	0315 (Addison)	12/19/82	none
12/28/82	0238 (Addison)	12/18/82	0228
12/27/82	0002	12/17/82	0345 (Addison)
12/26/82	2323	12/16/82	0313 (Addison)
12/25/82	0119	12/15/82	0320 (Addison)
12/24/82	0056	12/14/82	0221 (Addison)
12/23/82	0137	12/13/82	0125
12/22/82	0056	12/12/82	0223 (Addison)
12/11/82	0213	12/06/82	0030
12/10/82	0229 (Addison)	12/05/82	2327
12/09/82	0220	12/04/82	0249
12/08/82	none	12/03/82	0217
12/07/82	0046	12/02/82	0234

1/4/83 - 1000 hours

Writer again spoke spoke by telephone with Dick Meredith of Sonitrol. He advised Writer the Following information from a report prepared by Ginnie Bontrager:

- 0412 hours - she received "code out" call from Mr. Addison. He said he'd be leaving within 10 minutes.
- 0412-0420 - She had the monitor and alarm system activated. Heard conversation between 2 or 3 people, one of which at least was a

female. Saw the exterior door light come on and go off twice (indicating probably two went outside).

- approx. 0425 - heard no more voices; could hear someone moving about. Saw third and final door light. (door opened then closed). Heard faint crackling and popping sounds, similar to the sound of a "smoke eater". However, it got louder and louder. Bontrager realized it was not a fire eater and strongly suspected a fire. She called the restaurant in case Mr. Addison would hear the telephone and come back inside. No answer.
- 0426 hours - she telephoned Addison's home. His daughter answered, said he was not home yet.
- 0429 hours - strongly suspected it was a fire now and advised Sarasota Sheriff's Dept.
- 0430 hours - she heard over police monitor, zone 3 dispatched to the scene.
- 0430 - 0432 - she called Addison's home again and left word there was a fire and Sheriff's Dept. had been dispatched.
- 0432 hours - the system went dead (consumed by fire). Heard the deputy over the police monitor. Advised there was in fact a fire.
- 0433 hours - Bontrager attempted to phone employee David Abbott. No answer at his number.
- 0434 hours - employee Randy Foder was contacted and told of the fire.
- 0437 hours - she again tried the Addison residence; no answer.
- 0516 hours - Foder called Sonitrol to advise Mr.

Addison had been contacted and was now at the scene. The fire is under control.

1/4/83 - 1045 hours

W/F, Bobby Hannon, the owner of Bobby's Plants Unlimited, telephoned Writer. She stated she has a contract with Glados Restaurant to provide the live plants inside the business. She was concerned about being able to attempt to salvage any of her plants if possible. Hannon states that until this past month, the restaurant was good about paying their monthly rental bill. However, the \$170.00 bill due on 12/24/82 has yet to be paid.

In all she has \$660.00 worth of plants in the restaurant and will be needing compensation. Writer instructed her to contact Addison about going into the business to retrieve her plants.

She attributed the failure to pay their bill to poor business. Hannon noted that the Addisons had been pouring alot of money into the business but it was doing poorly.

1345 hours

Writer spoke by telephone with David Irons, claims representative for Reliance Insurance, Co., Atlanta, Ga, 1-800-241-2013 (813) 879-7444. (404) 262-2820. He advised Glados Restaurant was insured by his company through a local agency, Nicholas and Cannon Insurance, #1 N. Tuttle Ave., Name is to Glados Inc., insured on 9/3/82, policy #915016010.

There is 310,000 property damage insurance, plus \$5,000 additional expenses plus 10,000 per month, up to 6 months for loss of business operations insurance.

Insurance premiums are \$453.00 per month and have been paid up to date.

Irons explained the above is only for the business within the building. The physical structure is owned by Steve and Penelope Patapis of New York. It is insured for \$460,000 plus \$5,000 additional expenses, insured as of 9/3/82 under policy #CI5020619.

Patapis' business telephone is (516) 921-1616 and home telephone (516) 938-4890. His address is 950 Roxton, Plainview, New York.

Andrew Shaw is the local attorney representing Patapis. Patapis is the building owner only and formerly owned the Grapevine Restaurant at that same location. Irons provided the following information about the business:

- it opened on Oct. 11, 1982
- it is a corporation business with Gladys Addison the only corporate officer and 100% stockholder.
- Bill Addison is listed as general manager.
- from October, 1982 the business grossed \$37,000.
- for November, 1982 the business grossed \$50,000.
- for December, 1982 the gross is unknown but deposits were made into Gulf National Bank in Gulf Gate.
- Irons has talked with Mr. Addison who gave the following information:
 - he can only think of one disgruntled, employee, a cook named Kevin Coxe.
 - he closed the bar at 0230 hours and took the cash

box into the office.

- he was the only one to go into the office.
- in Southfield, Michigan, Mr. Addison had a gasoline distributorship.
- he mentioned in next couple of days he will be leaving for Michigan on business.

1/11/83 - 1345 hours

Writer telephones the Addison residence. Mr Addison's daughter answered and stated her parents are now in Michigan. They will return in approx. 1 1/2 weeks.

1/17/83 - 1630 hours

Writer went to Sonitrol Security Systems, 13 East Ave. and served Instanter subpoena for the records relating to Glados Restaurant on 12/31/82. Writer was given copy of the log sheet which contained this information. Also received were the hand written notes and report prepared by Virginia Bontrager who was monitoring the system at time of the fire at the restaurant. Writer later placed these original documents (and the copy of the log sheet) into evidence under P#23244.

1/18/83 - 1650 hours

Writer spoke by telephone with Randy Coggan of So. Trail Fire Dept. He advised Mr. Addison is now back in town.

1710 hours

Writer telephoned Mr. Addison. He agreed to come into this office tomorrow for an interview.

1/19/83/ - 1230 hours

Writer telephoned Addison's home and spoke to his daughter. She said he was at his attorney's office but was due back in about an hour. She will have him telephone Writer upon his return.

1600 hours

Writer telephoned Addison's home and business; no answer at either.

2015 hours

Writer telephoned Addison's home and business with negative results.

1/20/83 - 1415 hours

Writer spoke by telephone with William Addison. He stated he would not come into the office for an interview. He told Writer that any matters should be handled through his attorney, Mr. Wolf at 366-9444.

1430 hours

Writer Spoke by radio with Randy Coggan. Last evening fire commissioner Charles Lacy overheard Mrs. Addison in the O'Leary Bar (Gulf Gate Mall) bragging that she had taken and passed a polygraph (talking of the fire at the restaurant).

1445 hours

Writer telephoned Mr. Wolfe's office, 366-9444. He was busy. Secretary will have him return Writer's call.

1500 hours

Writer spoke by telephone with Det. Cathy Wark of the Southfield Police Dept., Southfield, Michigan. She has nothing about William Addison in her records. She advised the Purple Marting Gas station is now called Eight Sherman's Service at 2364 Eight Mile Rd., Southfield, Michigan. The phone number is (813) 355-2763.

1605 hours

Writer received message that Attorney Roger Wolfe, representing Mr. Addison, telephoned to say Mr. Addison will be in his office tomorrow morning. At that time he will decide if he will allow his client to be interviewed by Writer.

1/21/83 - 1430 hours

Fire Inspector Coggan had earlier advised Writer that a previous employee of Addison, W/F, Paige Watson has been heard to tell that the Addison's had a bad verbal argument at the My Place Bottle Club on 10/31/82.

Writer went to Watson's residence, 3900 S. Lockwood Ridge Rd., Apt #4 no phone but can be reached occasionally at a friend's at 921-3771). Writer spoke with Watson's roommate, Brady. She advised Watson has left for the afternoon but should return approx. 1800 hrs. today. Writer left a card with Writer's name and telephone number. Cindy stated she would tell Watson to telephone Writer.

1500 hours

Writer spoke with Terrance "Tv" Hannon, owner of My Place Bottle Club, 1300 Old Stickney Pt. Rd., 349-6433. Present with him was Terry Stratton, W/F, employee. This interview took place at the Bottle Club. Hannon and Stratton recalled the following information about Mr. & Mrs. Addison:

- the Addisons are members of the Bottle Club and they are on a first name basis with the Addisons.
- the Addisons were in the Bottle Club late Thursday night (actually Friday morning, 12/31/82).
- with them was a man who had never been in with them before believed to be Frank Broomfield).
- They had been in the Bottle Club approx. 5 minutes, 10-15 minutes maximum when Missy White called and asked for Mr. Addison to advise him the restaurant was on fire.
- they had brought beer with them but did not have time to finish the first one before Missy White called.
- describing their level of intoxication stated Mr. Addison was "maintaining". Mrs. Addison is hard to tell as she is "always hyper anyway."
- They (Addisons) have argued at the Bottle Club before but did not on this occasion.
- prior to the fire the Addisons averaged coming to the Bottle Club about twice a week, usually on their way home from the restaurant.
- since the fire they have not been back in the Bottle Club.
- they had been coming into the Bottle Club since before the restaurant ever opened.

- Mr. Addison owes a \$18.00 bar tab at the Bottle Club.

1/21/83 - 170 hours

Writer interviewed Missy White and Randy Foder at their home. White advised that she suspects Mr. Addison of setting the fire. She knows of several suspicious incidents by Mr. Addison prior to the fire.

These issues were discussed. White agreed to come into office for a tape recorded interview early next week when time permits more detailed accounts regarding her information.

1/24/83 - 1000 hours

After receiving return phone call from Paige Watson, Writer met with her at her home, 3900 S. Lockwood Ridge Rd. Apt #4. Watson is W/F, DOB 3/13/65, no telephone. Present at this interview was Randy Coggan, Fire Inspector with So. Trail Fire Dept. Watson provided the following information:

- When Glados opened she first worked as a hostess/cashier. However, she recently went to work as a "kitchen prep." because of more hours. She worked there until the fire closed the business.
- the day before Mr. Addison went to Michigan, she went to the restaurant to pick up her pay check. At that time Mr. Addison mentioned he expected to be back open for business in 6 to 8 weeks.
- the Addisons were "really strange people".
- there was always people quitting or being fired because of personality conflicts with the Addisons.
- the Addisons would "pick" at people frequently whom

they did not like.

- on such employee who quit because of this was "Kevin" last name unknown.
- David Abbott, the cook, had given his two week notice prior to the fire because of conflicts with the owners.
- Watson described the business at the restaurant as "very bad".
- the restaurant was open 4:00 to 10:00 P.M. Watson recalls one evening approx. one week before the fire there was only 18 dinners served all evening.
- she states only the grand opening day was a good (busy) night at the restaurant.
- she recalls one day Mr. Addison said the costs and pay for employees were far beyond the income.
- she states it was obvious the Addisons knew nothing about the restaurant business.
- she believes the Addisons had David Abbott telling them all the time how they should do things (as he had been in the restaurant business a long time).
- Watson knew there was alot of food in the coolers. Much food went to waste because the food was being prepared but not sold.
- There was a high turnover of employees because most had conflicts with the owners. Many quit to find other jobs.
- many of the servers had quit because there were so few customers they made little money since most of their income is from tips.
- Watson described Mrs. Addison as moody, impulsive, strange, unstable, especially when she was drinking. Alcohol affected her badly. She would get loud, yelling and would argue with Addison in public.
- she described Mr. Addison as "milder" but "strange"; drinking or not.

- both often drank in the bar after the restaurant closed.
- Watson recalls the office was always kept very neat, although if the desks were moved around often.
- her opinion is Mr. Addisons set the fire to the restaurant.
- Addison's daughters have told Watson about their parents having physical fights and bad arguments. Specifically, Mr Addison has been scratched up and on one occasion Mrs. Addison was kicked in the head.
- Watson knows Frank Broomfield used to work at the Red Lobster as manager before working at Glados. He was fired at red Lobster for coming to work drunk. He was the dining room manager at Glados.
- Broomfield used to argue with David Abbott, the chef, alot.
- Mr. Addison often interfered with them.
- once Mr. Addison seemed displeased with all the time he had to work at the restaurant. He commented that he could not get to the beach because he was always working.
- David Abbott told Watson about a week before the fire, that he did not think the business could last another month (because business was so bad).
- Vince, a member of Freespirit band that played at the restaurant, once told Watson that Addison told him that he (Addison) had enough crooked lawyers up north to get him out of anything.

Watson does not know Vince's last name but now the band is at the Venice holiday Inn playing under the name of Primetime.

- Another waitress, Sharon Taylor who lives at Place Seville Apts., has been told stories by Addison's

daughter about how Mr. & Mrs. Addison fight.

1/24/83 - 1110 hours

Writer and Fire Inspector Randy Coggan (So. Trail Fire Dept.) interviewed W/M, Frank Broomfield at his home, 6841 Halfmoon Dr., 922-4083. He provided the following information:

- on the night of the fire, Broomfield went to the bar at Glados at approx. 0100 hrs., 12/31/82.
- at approx. 0230 hrs., Mr. Addison took the bar money to the office.
- Broomfield admits he was very intoxicated.
- He left his automobile at the restaurant and rode with Mr. & Mrs. Addison to the Bottle Club. Mr. Addison then received a call from Missy White saying the restaurant was on fire.
- Broomfield states they all left the lounge for the Bottle Club together.
- Broomfield states he started working at Glados in November as the dining room manager. He replaced Joe Mehle.
- Mr. Addison is a good business man but knows nothing about the restaurant business.
- business had not been good. Since taking over the dining room Broomfield says there has been no increase in business but he has decreased the operating expenses, thus reducing the losses.
- Both line cooks had quit work due to problems with management.
- there were a couple of "bad weeks" (business) in December but that is to be expected.
- he knows the office was always kept neat and clean.

- Mr. & Mrs. Addison always used a Bic lighter to light their cigarettes.
- Mr. Addison is not the kind of person who walks away and leaves a cigarette in an ash tray. He always has his cigarette in his mouth or hand.
- he last saw Mr. Addison last Wednesday.
- Addison told him to look for another job but he'd like to have Broomfield back if he reopens the restaurant.
- Broomfield states he has not been paid any salary by Addison since the fire.
- he had been given the impression from Addison that he (Broomfield) would be kept on salary until the restaurant reopened. Then Addison told him after coming back from Michigan that if another opportunity came along for him (Broomfield) to take it.
- Broomfield recalls that the night of the fire (Thursday, 12/30/82) the restaurant served approx. 100 dinners which means an intake of approx. \$1000.00 for the dining room.
- prior to leaving for Michigan, Addison told Broomfield that they (Mr. & Mrs. Addison) were going back to Michigan to "get away after the fire" and to close on the sale of one of his gas stations for \$162,000.

1/24/83 -1240 hours

Writer and Fire Inspector Randy Coggan spoke with Sharon Taylor at her residence, 3230 Granada Drive, Apt. 227, 923-2974. Present were her roommates Gina White and Donna Paulsen. All three are now waitresses at Red Lobster on S. Tamiami Trail, Sarasota.

Taylor advised she was a waitress at Glados from the opening day until the fire. She stated business was very

bad. Her salary was \$2.01 per hour plus tips, the usual pay for a waitress. However, she did not make much money due to the low volume of customers. Taylor stated on most evenings she estimated the restaurant only served approx. 50 dinners. On a very good night there was only about 100 people served.

Taylor seemed reluctant to talk about the fire and the people involved. When asked her opinion about the incident she only smiled and stated "I don't know."

Taylor did state she has heard stories about Mr. & Mrs. Addison fighting but she personally has not witnessed same. She has been told this by Addison's daughter who now is also a waitress at Red Lobster.

1/31/83 -0900 hours

Mr & Mrs. Addison arrived at Sheriff's Dept. for interview. They were accompanied by Attorney Roger Wolfe. Writer requested to speak with Mr. Addison first and have Mrs. Addison wait in the lobby. Mr Addison was interviewed in interview room with his attorney present. Following Miranda Warnings, Addison gave the following information:

- the following persons were in the bar at the restaurant Thursday night after the restaurant closed (12/30/82).
 - Frank Broomfield, the dining room manager, employed approx. 3 weeks.
 - Van Thorsen, the bartender, employed approx. one month.
 - Kelley Whapam, waitress, employed since restaurant opened on Oct. 11, 1982.
 - Cheryl Thomas, waitress, employed since

- restaurant opened on Oct. 11, 1982.
- Howard Rogers, dishwasher
 - Mr. Addison
 - Mrs. Addison
 - the bar closed at 0200 hours to get the customers out by 0230.
 - Addison went to the office at 0230 to put the money from the bar in the safe. This was the only time he went in the office that night.
 - all employees knew a knife or spatula could be used to pick the lock to the office door.
 - persons with combination to safe:
 - Mr. & Mrs. Addison, arrived at restaurant 12/30/82 at approx. 1300 hrs., did not leave until approx. 0200 hrs.
 - Missy White, bookkeeper, left restaurant approx. 1800 hrs.
 - Clark Pennington, came in the bar about midnight, stayed until approx. 0300 hrs.
 - Dwight Davis - employee who quit about two weeks prior to the fire. He was not in the restaurant or bar the night of the fire.
 - while they were in the bar all doors to the restaurant were locked except the north door to the lounge.
 - Addison advises the only flammable fluids he knew of in the restaurant were sterno (used for heating hors d'oeuvres) and lamp oil for the oil burning candles that were on each table.
 - the chef David Abbott kept the sterno stored. Addison states he did not know where. The lamp oil was stored in storage room, north-east corner of the building.
 - the oven and grill ran on LP gas. Gas was stored in a 1,000 gallon tank, underground in back of the restaurant. Only the gas people had key to the tank.

- Addison states he would suspect Steve Patapis of setting the fire or having it set. He is the actual owner of the building the restaurant is in. He built the building and opened a restaurant. It closed down. Then the Grapevine was opened up afterwards. Addison bought the business after the Grapevine closed.
- Patapis' attorney is Andy Shaw.
- Addison thinks Patapis wants him out of the restaurant so he (Patapis) can open a restaurant again.
- Addison received eviction notice from Patapis on 1/14/83 for Addison to vacate the premises.
- Andy Ameras, owner of the Grapevine Restaurant before it closed. He still owns the Grapevine in Bradenton. He sold Addison the lease and equipment to the restaurant. Ameras got a lump sum of money plus \$100,000 to be paid over the next 10 years.
- Addison states he, Mrs. Addison and Frank Broomfield were the last to leave the restaurant. They left together at approx. 0400 hrs.
- the others had left approx. 5 minutes prior.
- all doors have deadbolt locks.
- Mr. & Mrs. Addison drove to the Bottle Club on Old Stickney Pt. Rd. (Siesta Key).
- They had not been there more than 15 to 20 minutes before Missy White called to say the restaurant was on fire.
- Frank Broomfield, who had ridden to the Bottle Club with the Addisons, rode back with them to the fire.
- Randy Foder and Missy White were there and the fire dept. when the Addisons and Broomfield arrived.
- Mr. Addison asked a fireman where the fire was. He was told it was in the kitchen area.
- after about 30 minutes he thought the fire was out. The

front door was unlocked by firemen so he went in where it had burned and what was damaged. It was then he was overcome by smoke inside and taken to Sarasota Memorial Hospital.

- Addison stated the last night open (Thursday, 12/30/82) was a very busy night.
- for the New Year Eve's party Addison said he expected "a full house".
- He stated some tickets were sold in advance but he did not know how many. There were some reservations made. Then tickets would be bought when the people arrived.
- regarding insurance on the restaurant Mr. Addison stated the insurance company would not write a policy for the amount of insurance he asked for - \$700,000. Instead he got a policy for \$460,000 plus \$310,000 on equipment, plus \$10,000 per month up to six months for business interruption.
- Addison states he got out of the hospital on Saturday (day after the fire).
- he left to go to Michigan on business on 1/??/83 and returned on 1/16/83.
(Note: Addison stated Mrs. Addison went with him but he did not mention that Missy White and Randy Foder also went).
- Addison states that he had been in the gasoline station business. He had sold some of the businesses and still had some.
- Addison states he still has business interests in Michigan.
- He states he has no business problems in Michigan.
- Addison states he has been married to Mrs. Addison for 24 years. He admits they fight.
- Addison states his only arrest is here in Sarasota for

- when she had him arrested for spouse battery.
- Mr. Addison retained Mr. Wolfe approx. 1/5/83.
- he gave a statement to the insurance company after his return from Michigan.
- Addison states he had found a padlock cut to the garage door, north side of restaurant. He does not know how long it has been cut.
- Also, the emergency door alarm is not working. Addison states this alarm is to go off automatically if the door is opened. Writer suggested the firemen probably disconnected this alarm when all doors were opened on the day of the fire to let out heat and smoke.

Following this interview Writer was not allowed to interview Mrs. Addison. Attorney Roger Wolfe set a time of 1000 hrs. Wed, 2/2/83 for her to be interviewed. (Thus preventing Mrs. Addison from possibly saying anything contradictory to Mr. Addison).

Mr. Addison expressed desire that Writer hurry this investigation so that he could get on with this and settle with the insurance company.

Writer then asked Mr. Addison if he would take a polygraph examination. He said he would not take a polygraph because he does not like them. "I've been watching a lot of TV."

Attorney Wolfe interrupted and told Writer he will be back in touch about the polygraph after he talks with his client.

2/1/83 - 1400 hours

Writer received a letter from Mr. Wolfe that Mrs. Addison will not be interviewed nor will Mr. Addison take a polygraph exam.

1405 hours

Writer called Mr. Wolfe's office and was told he was with a client. Writer left the message for him to call Writer.

1600 hours

Writer sent copy of above described letter to Mr. David Irons, claims representative for Reliance Insurance Co.

2/7/83 - 1330 hours

Writer went to the home of Frank Broomfield and was advised he is at the Gingerbread Man Bar in Gulf Gate.

1335 hours

Writer located Broomfield at the Gingerbread man bar. He requested to talk with Writer at length regarding the Glados fire as he felt he was being looked at as a suspect. Writer and Broomfield drove to Sheriff's Dept. for interview. While enroute, Broomfield stated he had nothing to do with the fire in any way. He stated that if he was a suspect he would like to take a polygraph to clear his name. Broomfield had just picked up printed copies of his resume from a printing office near the Gingerbread Man Bar. He stated he is job hunting and does not need any investigation with him at this time as it would prevent him from getting job.

At the Sheriff's Dept. Broomfield was given a polygraph examination by Lt. Max Skeens. It was Skeens' conclusion that Broomfield was being truthful about not being involved in the fire or knowing who did set the fire.

Writer then discussed again the events of the night prior to the fire. Broomfield admitted being quite intoxicated but was sure when they left the restaurant Mr. & Mrs. Addison and he left at the same moment out the north lounge door.

The rest of his information was same account as given in earlier interview with him.

1500 hours

Writer telephoned the Holiday Inn in Osprey, requesting information about the band Primetime. Writer was advised this group has disbanded. The band leader was the drummer named Vince Cervera who lives in Sarasota. However, Cervera is believed to be in Houston at this time playing for another band.

1510 hours

Writer checked telephone book for Vince Cervera, showing a listing at 2524 Sunnyside St., 366-5136. Writer telephoned this number and was advised Vince is now in Houston and will return next week.

1700 hours

Writer served Instanter subpoena at Accounting Associates, 6621 Superior Ave. for records relating to

Glados restaurant. This is the accounting firm that has handled the accounting and tax records for Glados since its opening for business. Writer reviewed Glados records with employee Linda Loewenstern. Due to the large number of documents, copies were provided for Writer.

Loewenstern knows that Mr. Addison got his insurance binder and read it. He though he had \$20,000 coverage for disruption of business, instead of \$10,000. Also, after the fire he had a check written to him for salary. Prior to this neither Mr. & Mrs. Addison had claimed a salary.

2/8/83 - 1015 hours

Attorney Roger Wolfe returned Writer's call. He will check with Mrs. Addison to determine if her position is still one of allowing no interview with Writer.

1030 hours

Writer received transcripts from David Irons (Reliance Insurance Co.) interview of Mr. & Mrs. Addison with Attorney Roger Wolfe present. This interview took place 1/18/83 during the morning (see enclosed transcripts for detailed account of interview).

2/8/83 - 1120 hours

Writer served Instanter subpoena at Gulf Coast National Bank. 6525 S. Tamiami Trail for the records relating to Glados Restaurant. Copies of these records were made available to Writer (see enclosed bank records).

2/28/83 -1430 hours

Kelsie Moore, customer relations manager of the Eli Witt Vending Division, 1213 44th Ave. E., "L", P.O. Box 7??, Brandon came into office without appointment to talk with Writer. His telephone number is 747-1257.

Mr Moore explained that his company has 3 vending machines inside Glados Restaurant. As it now appears the restaurant is not reopening he wished to know how to contact the owner to make arrangements to get his machines out.

He advised he was not surprised the fire occurred as the business had been doing so poorly, especially considering the amount of money that had been poured into it.

Moore states he collected little money from the vending machines there. Those machine accounted for little income as business was so bad. The machines he had there were a cigarette machine, a juke box and a Ms. Pac Man. Moore volunteered to give Writer a week by week account of the money taken from these machines. The money intake fluctuation can be used as an indicator of the restaurant's business. He will get back in touch with Writer when he is able to make the week by week account.

Writer instructed Moore to contact Roger Wolfe regarding the acquisition of his machines from the restaurant.

1515 hours

Writer spoke by telephone with Vince Cervera, 366-5136. He agreed to stop by Sheriff's Dept. in the morning for an interview. He was not advised of the topic to be discussed.

3/1/83 - 1000 hours

Writer interviewed Vince Cervera, W/M, 8/??/51 at the Sheriff's Dept. He and his musical band, Free Spirit, became acquainted with Glados restaurant and its owners after being booked to play there before through a booking agent, Ron Trudeau. Free Spirit played at Glados for four (4) weeks in November. They were scheduled also for the last two weeks of December with the last night being New Year's Eve.

On Thursday night (before the fire on Friday morning) the bar was slow so the band stopped playing at approx. 2330 hrs. Cervera states he sat and talked with Mr. & Mrs. Addison at the bar from approx. 2330 - 0130 hrs. Cervera recalls the Addisons were drinking heavily as was their custom.

On this evening Cervera felt it odd the Addisons spent so much time talking to him. They had never been so talkative before. He recalls he sensed something was different. Often in the past they had discussed how poorly the business was doing but on this night Mr. Addison had a "so what" who cares" attitude that business was not doing well.

In describing the Addisons, Cervera stated they were very "weird" people to get to know. One day they would treat you very nice, polite and friendly. Then suddenly the next day they might completely ignore you. He stated they were very hard to figure out.

He also noted Addison seemed to "talk too much" about things regarding business, etc. that he (Cervera) had no business hearing. Addison talked to him about the gas stations in Michigan and how much money he and his wife had, as well as how wealthy their parents were.

On one occasion Mr. Addison told Cervera that he had a bunch of good attorneys and referred to them as "a bunch of crooks that could get him out of anything".

Talking about Mrs. Addison, Cervera states that drinking alcohol greatly changes her personality. He has observed when she is drinking that she will hold and kiss other men and allow them to "grab" her when Mr. Addison is not around. However, he personally has not seen them argue or fight.

Cervera states that he felt it poor business for Mrs. Addison to behave the way she does, sighting her excessive drinking, talking and having even seen her passed out on a table in the bar.

Cervera, although no longer with the band, Free Spirit, still is in contact with the members. They tell him they have seen Mrs. Addison on several occasions with different men at O'Leary's Bar in Gulf Gate. She came and left with these men but Mr. Addison was not present.

Cervera recalled on one occasion he was talking with the girl that works at La Marsala Restaurant. The topic of Glados Restaurant came up and she said "well you know they won't be open much longer. They are going to close." Cervera noted that Addison used to "hang out" alot at La Marsala and he felt this girl (he did not

know her name) and Mr. Addison were "very friendly". This conversation took place a period of time prior to the fire.

Writer's note: the notion that Mr. Addison was friends with the people and hung out at La Marsala Restaurant (7253 S. Tamiami Trl.) was confirmed also in earlier interviews with Mr. Addison and Frank Broomfield.

Cervera ended the interview by saying that and the band members often see Mrs. Addison in Mrs. O'Leary's bar, he will talk with them to see if they have heard any statements or information that may be valuable.

3/23/83

Writer received in the mail from Kelsie Moore, the receipts of the vending machines in Glados Restaurant (as this may be considered an indicator of the business being done). See enclosed report from the Eli Witt vending division.

3/29/83

Writer telephoned the home of Vince Cervera to find out if he has learned any additional information. Writer was told Cervera is in Miami and will not return for 3 or 4 weeks.

SUMMARY

Although no accelerants could be detected by fire investigator Coggan, the cause of this fire is believed to be arson. There are baseboard burns on opposite sides

of the room that should no appear in an accidental fire situation.

This fire caused heavy damage to the office and part of the kitchen area. Fire burned though the roof above the office. It was first heard on Sonitrol monitor as owner, Bill Addison was leaving the building. This fire only had from approx. 0425 to 0439 hrs. to build and cause such great damage. It is felt no accidental fire in this neatly kept office could have spread so fast, gotten so hot and caused such damage in 14 minutes had arson not been involved. Electrical wiring was definitely ruled out as a cause of fire.

It is known that business was so bad at the restaurant that it was costing the owner approx. \$30,000 per month in the red to stay in business. Addison was under the impression that if business was disrupted he would make 20,000 per month from insurance (he later learned the policy provided for only one-half that figure for disruption of businesses).

Everyone in this investigation has been cooperative except Mr. & Mrs. Addison who felt it necessary to leave for Michigan soon after the fire. Upon their return they felt it necessary to have an attorney represent them even before Writer met with either. Mr. Addison was interviewed with his attorney present. He refused to take a polygraph examination. Writer was then denied an interview with Mrs. Addison on the basis that she is still too upset over the fire.

Writer notes the taped interview with bookkeeper Missy White to contain numerous points of suspicious circumstances leading up to and after the fire that

circumstantially show Addison's motive and planning to burn the restaurant.

Writer does feel there is great circumstantial evidence to indicate that Bill Addison did set fire to Glados Restaurant. However, there lacks enough evidence to support a charge and conviction in this matter. (Although in great amount, all evidence is circumstantial).

This case will be considered exceptionally cleared as the conclusion of this investigation is that the owner Bill Addison did set fire to the restaurant. based on information listed throughout this report.

However, a criminal charge will not be filed at this time, pending additional information or evidence that could result in a conviction at trial.

EXCEPTIONALLY CLEARED